

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22723 of 2020

Arising Out of PS. Case No.-16 Year-2019 Thana- KUNDWACHAINPUR District- East
Champaran

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GUPESH KUMAR @ BHUPESH KUMAR YADAV Son of Ramnath Kapar
Resident of Village- Mahangua, P.S.- Kundwa Chainpur, District- East
Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Anshu Dhar Sharma

For the Opposite Party/s : Smt. Anita Kumari

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 29-09-2020 As of now, the Courts have not resumed normal physical
hearing. The matter has been listed today for consideration
through Video Conferencing.

Learned counsel are appearing and making submissions
from their residence. The Court master and Secretary are also
part of this virtual Court proceedings with the aid of audio
visual technology.

Heard learned counsel for the petitioner and learned APP
for the State.

Learned counsel for the petitioner is expected to honor his
undertaking given in the instant case for depositing the requisite
court fee and to remove the defects as pointed out by office
when called upon.



Petitioner apprehend his arrest in connection with Kundwa Chainpur P.S. Case no. 16 of 2019 instituted for the offence under Section(s) 272 and 273 of the Indian Penal Code and Section 30(A) of the Bihar Prohibition and Excise Act, 2016.

The information forming the basis of the petitioner's implication is that 90 liters Nepali country made Saufi wine has been recovered from a motorcycle on which two persons were moving, who succeeded in fleeing away.

It is submitted by the petitioner's counsel that implication is without any basis and merely on the statements of the villagers. Admittedly, they were not apprehended at the spot. Petitioner has no criminal antecedents. The false implication of the petitioner, therefore, cannot be ruled out. It is submitted that since even as per prosecution case, the petitioner has not been apprehended at the place of recovery and the offences under the Bihar Prohibition and Excise Act, could not be made out. The other co-accused, namely, SonaLal @ Sonalal Ram has been allowed the privilege of anticipatory bail by this Court passed in Cr. Misc. No. 86610 of 2019.

The learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions contained in Section



76(2) of the Bihar Prohibition and Excise Act and submitted that pre-arrest bail would not be maintainable.

This Court is conscious of decision of the Full Bench in the case *of Ram Vinay Yadav vs. State of Bihar* reported in **2019(2) PLJR 1089**. Having regard to the law laid down in the said judgment and the submissions advanced on behalf of the petitioner, this Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submissions of counsel for the petitioner.

Considering the aforesaid facts, prayer of the petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner before the court below, named above, within four (04) weeks from today, he shall be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the Spl. Judge Excise Act, East Champaran, Motihari in connection with Kundwa Chainpur P.S. Case no. 16 of 2019, subject to the conditions as laid down under Section 438(2) Cr. P.C. subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to



inform the Court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

(Madhuresh Prasad, J)

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